

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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August 25, 2017

Linda Benfield, Attorney
 Foley & Lardner
 777 East Wisconsin Ave
 Milwaukee, Wisconsin 53202

Casetrack #2017-NEEE-017
 Milwaukee County

Subject: Summary for August 9, 2017 Hazardous Waste Enforcement Conference / Response Requested by
 October 20, 2017

Dear Ms. Benfield:

The Department of Natural Resources (department) thanks you and others for representing Container Life Management, LLC (CLCM) and Greif, Inc. during an enforcement conference with the department on August 9, 2017 to discuss alleged violations of Wisconsin's hazardous waste laws. The purpose of this letter is to provide a brief summary of our discussions during the enforcement conference. At the start of the enforcement conference, CLCM provided the department with a written response to the July 19, 2017 Notice of Violation (NOV).

Three industrial locations were subject to the NOV:

- 2300 W Cornell Street, Milwaukee, Milwaukee County, Wisconsin (Cornell St Site) – At the Cornell St Site, CLCM processes / washes totes (typically 275 and 330 gallon totes). Totes remain intact and a nozzle is inserted in the container through the bung hole to rinse. Wastewater generated from this location is collected for later disposal.
- 3950 S Pennsylvania Avenue, St. Francis, Milwaukee County, Wisconsin (Pennsylvania Ave Site) – At the Pennsylvania Ave Site, CLCM processes / washes drums. Drums remain intact and a nozzle is inserted in the container through the bung hole to rinse. Wastewater generated from this location is treated prior to discharge and is regulated under the state's pretreatment program.
- 8570 S Chicago Road, Oak Creek, Milwaukee County, Wisconsin (Chicago Rd Site) – At the Chicago Rd Site, CLCM operates a drum reconditioning facility. The reconditioning process includes the use of an incinerator to burn the drum's contents. The heads of the drums are cutoff to facilitate burning of residual material.

On May 4, 2017, the department submitted a request for information to Foley and Lardner (Foley), on behalf of CLCM. Foley's May 12, 2017 response stated "CLCM is an indirect joint venture subsidiary of Greif Inc." During the enforcement conference, it was stated that the NOV incorrectly listed Greif, Inc. as the majority shareholder of CLCM, through an indirect joint venture relationship. Instead, it was represented that Greif USA LLC - based in Delaware, Ohio - is the correct corporate entity, having the majority indirect joint venture ownership of CLCM. Neither Greif nor Greif USA own or operate the Cornell St Site, the Chicago Rd Site, or the Pennsylvania Ave Site.

The department withdraws the allegations against Greif Inc as outlined in the NOV and reserves the right to allege violations against Greif USA, if deemed appropriate by the department.

CLCM purchased the operating assets at the above sites from Mid-America Steel Drum Company Inc in November 2013. In addition to the assets, CLCM bought the right to use the “Mid-America Steel Drum” name and any variation of that name.

At the enforcement conference, the department reviewed with CLCM each of the alleged violations outlined in the NOV. CLCM’s progress on resolving those violations and returning to compliance status was also discussed. The violations and CLCM’s plan to resolve these issues in the future are described in detail below:

Violations #1, #2, and #4– Storage of hazardous waste without a license (Section 291.25(2)(b), Wis. Stats. and s. NR 670.001(3), Wis. Adm. Code) (Sites: Cornell St, Pennsylvania Ave, and Chicago Rd)

When containers are off-loaded, containers that obviously contain material, by sight and feel, are set aside. These totes are classified as “heavies”. The heavies are tracked by CLCM and have been reported to stay at CLCM’s facilities for a period of time awaiting customer pick-up. During the enforcement conference, CLCM stated that it is industry practice for containers to be placed in the “heavy area” pending pick-up by the generator. As soon as a container is identified as “heavy”, CLCM places a “rejection” sticker on the drum and then notifies the generator. During the inspections, the department did not observe rejection stickers on every container. The department requested a copy of the rejection sticker.

The department stated that a container classified as “heavy” contains a waste and must be treated as such. CLCM disagreed stating material in a container is not a waste but is instead a “product” and that it is by human error the generator loaded a “heavy” container onto the trailer. A generator sends a container off for recycling and does not send a container off to dispose of its contents. CLCM indicated all of the containers arrive under generator certification that the container is empty and title of the container transfers from the generator to CLCM after it is verified by CLCM that the container is empty.

The department and CLCM agree that CLCM stores containers that are not empty. The disagreement lies with whether or not the “heavy” container holds a product or a waste. CLCM argues that though it is not a treatment, storage, disposal (TSD) facility, it acts in good faith by returning the non-empty containers back to the generator within 60 days and is only providing temporary storage of the container until it is returned. The department requested a copy of the logs maintained by CLCM.

Response requested – copy of the rejection sticker, written clarification as to how / when the rejection sticker is used, and January 1, 2016 through present “heavy” logs for each facility (Cornell St Site, Pennsylvania Ave Site, and Chicago Rd Site)

Violations #3 and #6 – Transport hazardous waste without a license (Section 291.23(1), Wis. Stats. and s. NR 663.13(b), Wis. Adm. Code) (Sites: Pennsylvania Ave and Chicago Rd)

The semi-trailers are owned and operated by CLCM. From the Pennsylvania Ave Site, totes are transported by CLCM to the Cornell St Site. From the Chicago Rd Site, poly-drums are transported by CLCM to the Pennsylvania Ave Site and totes to the Cornell St Site. Semi-trailers are known to transport non empty containers, some of which contain hazardous waste. During the enforcement conference, CLCM stated that they do not generate the non-empty containers. As such, the generator is responsible for properly certifying containers are empty. CLCM does not take title to the containers until the containers have been received and accepted (i.e. determined not to be a “heavy”) by CLCM.

The department and CLCM agree that CLCM transports containers that are not empty. The disagreement lies with whether or not CLCM is transporting a product or a waste, and if CLCM is responsible for transporting non-empty containers prior to accepting containers at its facilities. CLCM argues that the federal Department of Transportation (DOT) regulations places the responsibility on the offeror (the entity that provides the containers to CLCM) to comply with the hazardous waste rules. The department will further review this violation.

Violation #5 – Treatment of hazardous waste without a license (Section 291.25(2)(b), Wis. Stats. and s. NR 670.001(3), Wis. Adm. Code) (Site: Chicago Rd)

During the enforcement conference, CLCM stated residual material that is removed from a drum when it is inverted onto the incinerator line is not regulated so long as the drum is considered empty at the time it is inverted. Trained staff evaluate each drum to determine if the drum contains material and that they have a stick to measure the level of the drum's contents if a concern arises. CLCM stated all drums that are on the incinerator line are "empty" prior to being inverted.

The department and CLCM agree that residual material inside a drum is allowed to be burned in the incinerator after it is inverted. The disagreement lies with whether or not the contents that leave the drum after the drum is inverted (residual material) is regulated under RCRA or is exempt as part of a RCRA empty container. CLCM stated that RCRA empty status of the drum is determined by the generator and verified by CLCM trained staff. The department requested a copy of current written protocols that addresses a situation when material is observed in a drum after the lid has been removed.

Response requested – submit a copy of written protocols

Violation #7 – Land disposal restrictions (Section 291.23(1), Wis. Stats. and s. NR 663.13(b), Wis. Adm. Code) (Site: Chicago Rd)

During the enforcement conference, CLCM stated that any residual material removed from a RCRA-empty drum treated in the incinerator is not subject to RCRA. The department and CLCM agree that if the ash exhibits a characteristic hazardous waste then the ash is subject to RCRA and must be disposed of accordingly.

ADDITIONAL DISCUSSION ITEMS:

Cornell St, Milwaukee Site – Characterize each individual wastewater collection tote

During the enforcement conference, the department stated that not all waste collection totes are being characterized. Since CLCM receives totes that contain residual material that is inconsistent from one day to the next, each individual collection waste tote should be characterized prior to disposal. The department requested CLCM to develop a protocol for analyzing each waste collection tote.

Response requested – submit copy of written protocols and all waste collection tote characterization analysis from January 1, 2017 through present

Pennsylvania Ave, St Francis Site – Representative sampling of sludge

During the enforcement conference, the department stated that CLCM is not conducting representative sampling of the filter cake and clean-out sludge. The department requested CLCM develop a sampling plan to accurately characterize this waste material.

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Response requested – submit copy of sampling plan

Chicago Rd, Oak Creek Site - Discrete analysis for bag house dust, incinerator ash, and shot blast debris

During the enforcement conference, the department stated that there should be discrete analysis for bag house dust, the incinerator ash, and shot blast debris. These waste materials should not be comingled prior to sampling. The department requested CLCM develop a sampling plan to accurately characterize individually each waste material.

Response requested – submit copy of sampling plan

All sites – Universal waste containers require proper labeling and dates

During the enforcement conference, the department stated that CLCM was not properly labeling and dating universal waste containers. CLCM provided the department with photographs of universal waste kits and universal waste storage areas. No further action required.

The department acknowledges that CLCM does provide a beneficial service to the American industry. The department expects those services to be conducted within the regulatory scheme.

Please provide all of the requested information by **October 20, 2017** to my attention at the address shown in the letterhead.

At the conclusion of the enforcement conference, the department discussed with CLCM the potential forfeitures through referral to the Department of Justice for the violations alleged in the NOV.

If you have questions regarding this letter, please contact me at (920) 360-1938.

Sincerely,



Anne Van Grinsven
Environmental Enforcement Specialist

Enc: Sign-in
Response Summary

cc: Cathy Baerwald – DNR
Mike Ellenbecker – DNR
Gary Victorine – Chief, RCRA Branch, EPA Region; 577 Jackson Blvd, Chicago, IL 60604

ENFORCEMENT CONFERENCE

Container Life Cycle Management / Greif
Hazardous Waste CaseMilwaukee DNR Service Center
Wednesday, August 9, 2017
3:00 p.m.

Present for Conference	Representing / Title	Phone #
Kory Hansen	EE/DNR	(920) 662-5163
Matt Matrise	WMM/DNR	(262) 574-2143
Cathy Baerwald	WMM/DNR	(414) 263-8698
Mike Ellenbecker	WDNR	262-884-2342
Jess Kramer	WDNR	608-267-0846
Anne Van Grinsven	EE/DNR	920 360 1938
Zenda Buford	Foley/CLCM	(414) 297-5825
LARRY BUEHLER	RIPA	312/625-8355
Amanda Beggs	Foley/CLCM	(414) 319-7037
GROFF WESTPHAL	CLCM	(740) 657-6616
Paul Rankin	RIPA	301.577.3786
Gary Montz	CLCM	740 972 0293

SUMMARY OF ITEMS TO BE SUBMITTED
IN RESPONSE TO HAZARDOUS WASTE ENFORCEMENT CONFERENCE
RESPONSE DUE OCTOBER 20, 2017

VIOLATIONS #1, #2, and #4

- ☐ Copy of the rejection sticker
- ☐ Written clarification as to how / when the rejection sticker is used
- ☐ "Heavy" logs for each facility (Cornell St Site, Pennsylvania Ave Site, and Chicago Rd Site)

VIOLATIONS #3 and #6

- ☐ No response required

VIOLATION #5

- ☐ Copy of written protocols

VIOLATION #7

- ☐ No response required

ADDITIONAL DISCUSSION ITEMS

- ☐ Cornell St Site - copy of written protocols
- ☐ Cornell St Site - all waste collection tote characterization analysis from January 1, 2017 through present
- ☐ Pennsylvania Ave Site – copy of sampling plan
- ☐ Chicago Rd Site – copy of sampling plan